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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/645,407

08/21/2003

Aleta Ricciardi

042837-0352243

7781

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7590

10/08/2009

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EXAMINER

FRITZ, BRADFORD F

ART UNIT

PAPER NUMBER

2442

NOTIFICATION DATE

DELIVERY MODE

10/08/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docket\_ip@pillsburylaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/645,407	<b>Applicant(s)</b> RICCIARDI ET AL.	
	<b>Examiner</b> BRADFORD F. FRITZ	<b>Art Unit</b> 2442	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 21 August 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 August 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 101***

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

2. Claims 46-52 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claimed computer readable medium is not a process, machine, manufacture, or composition which fails to establish a statutory category of invention (*i.e., the instructions could be transitory*).

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-10, 31-39, 40-52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner notes that any claim rejected and not specifically mentioned below remains rejected based on dependency.
5. The term "capable" in claims 1, 31, 40, 46, is a relative term which renders the claim indefinite. The term "capable" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

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6. The term "related" in claim 1, is a relative term which renders the claim indefinite.

The term "related" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

7. Claim 1 recite the limitation "it". There is insufficient antecedent basis for this limitation in the claim.

8. Claim 1 recites the limitation "its". There is insufficient antecedent basis for this limitation in the claim.

9. Claim 1 recites the limitation "the other surrogates". There is insufficient antecedent basis for this limitation in the claim.

10. Claim 31 recites the limitation "the telephone network". There is insufficient antecedent basis for this limitation in the claim.

11. Claim 31 recites the limitation "the remote computing devices". There is insufficient antecedent basis for this limitation in the claim.

12. Claim 38 recites the limitation "the state". There is insufficient antecedent basis for this limitation in the claim.

13. Claim 40 recites the limitation "the game". There is insufficient antecedent basis for this limitation in the claim.

14. Claim 40 recites the limitation "the activity". There is insufficient antecedent basis for this limitation in the claim.

15. Claim 46 recites the limitation "the game". There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

16. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

17. Claims 1-52 are rejected under 35 U.S.C. 102(e) as being anticipated by Hutcheson et al. (2002/0061743), hereinafter referred to as Hutcheson.

18. Regarding claim 1, Hutcheson disclosed a capable network environment; a plurality of remote computing devices in communication with the capable network environment (abstract, paragraph 0060 and Fig. 2); and a plurality of surrogates operating within the capable network environment (abstract, paragraphs 0018-0019, 0127-0129, and Fig. 2); wherein each of the remote computing devices is associated with one of the surrogates and the surrogates are logically organized into groups allowing the remote devices related to the grouped surrogates to participate in an activity together (abstract, paragraphs 0018-0019, 0127-0129, and 0114, 0139).

19. Regarding claim 2, Hutcheson disclosed a software module for communicating with the remote computing device with which it is associated (abstract, paragraph 0060 and Fig. 2); a software module for communication with the other surrogates (paragraphs 0062-0063 and 0104-0107, Fig. 5); a software module for calculating changes of state

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with respect to the activity (paragraphs 0062-0063 and 0104-0107); a software module for calculating the state of the activity (paragraphs 0062-0063 and 0104-0107); a software module for storing its state with respect to the activity (paragraphs 0062-0063 and 0104-0107); a software module for capturing usage (paragraphs 0062-0063 and 0104-0107), activity and outcome (paragraphs 0062-0063 and 0104-0107); and a software module for buffering data and later transmitting communication to its computing device (paragraphs 0062-0063 and 0104-0107, Fig. 5); wherein each of the surrogates represents its associated remote computing device within the distributed computing application (abstract, paragraphs 0018-0019, 0127-0129, and Fig. 2).

20. Regarding claim 3, Hutcheson disclosed wherein the at least one of the surrogates is further comprised of a group proxy (paragraphs 0114 and 0139).

21. Regarding claims 4 and 33, Hutcheson disclosed a group service operating within the network environment (abstract, paragraph 0060 and Fig. 2).

22. Regarding claims 5, 15, and 25, Hutcheson disclosed wherein the activity is a multiplayer game and each remote computing device is a game input/output device for a game player (abstract, paragraph 0060 and Fig. 2).

23. Regarding claims 6, 16, and 26, Hutcheson disclosed wherein the activity is an emergency first responder support system (abstract, paragraph 0060 and Fig. 2, *intended use which Hutcheson's system could perform*).

24. Regarding claims 7, 17, 27, 34, 44, and 50, Hutcheson disclosed wherein the remote computing devices are cellular telephones, personal digital assistants,

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communicators, dedicated game devices, personal computers, laptop computers or work stations (paragraph 0100).

25. Regarding claims 8, 18, 28, and 35, Hutcheson disclosed wherein the remote computing devices are connected to the capable network environment via a wireless network, telephone network, wide area network, local area network or the Internet (paragraph 0081).

26. Regarding claims 9, 19, 29, 36, 45, and 51, Hutcheson disclosed wherein the capable network environment is comprised of a plurality of computers interconnected via a high Speed network (paragraph 0081).

27. Regarding claims 10, 20, 30, 37, and 52, Hutcheson disclosed wherein the computers are personal computers, work stations or network servers (paragraph 0100).

28. Regarding claims 11, 21, 40, and 46, Hutcheson disclosed a first remote device contacting a capable network environment and requesting to participate in the activity (paragraphs 0114, 0139, and Fig. 2); the network environment instantiating a first surrogate assigned to the first remote device (paragraphs 0018-0019 and 0127-129); a second remote device contacting the capable network environment and requesting to participate in the activity (paragraphs 0114, 0139, and Fig. 2); the network environment instantiating a second surrogate assigned to the second remote device (paragraphs 0018-0019 and 0127-129); arranging the first surrogate and the second surrogate into a group (paragraphs 0114, 0139, and Fig. 2); and the first remote device and the second remote device participating in the activity together (abstract, paragraphs 0114, 0139, and Fig. 2).

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29. Regarding claims 12, 22, 41, and 47, Hutcheson disclosed the step of the first surrogate and the second surrogate registering with a group service (paragraphs 0114, 0139).

30. Regarding claims 13, 23, 42, and 48, Hutcheson disclosed the step of the group service providing the first surrogate with a first group proxy and the second surrogate with a second group proxy (abstract, paragraphs 0018-0019, 0127-0129, and Fig. 2).

31. Regarding claims 14, 24, 43, and 49, xxx disclosed wherein the group is a coordinator cohort group or a peer group (paragraphs 0114 and 0139).

32. Regarding claim 31, xxx disclosed a wireless telephone network; a capable network environment connected to the telephone network; a plurality of mobile devices wirelessly connected to the telephone network; and a plurality of surrogates operating within the capable network environment; wherein each of the remote computing devices is associated with one of the surrogates and the surrogates are logically organized into groups allowing the remote devices related to the grouped surrogate to participate in an activity together.

33. Regarding claim 32, Hutcheson disclosed a plurality of group proxies associated with the surrogates (paragraphs 0114 and 0139).

34. Regarding claim 38, Hutcheson disclosed wherein at least one of the surrogates in the group calculates the state of the activity (paragraphs 0062-63 and 0104-0107).

35. Regarding claim 39, Hutcheson disclosed wherein at least one of the mobile devices includes a software MIDlet that performs a portion of the game functions (paragraphs 0062-63 and 0104-0107).



***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRADFORD F. FRITZ whose telephone number is (571)272-3860. The examiner can normally be reached on 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on 571-272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Unit 2442

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